



## **MINUTES**

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE  
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)  
REGULAR MEETING  
11:00 a.m., Thursday March 17 2011  
Human Resources Verde Conference Room  
7575 E. Main Street  
Scottsdale, Arizona 85251**

**PRESENT:** Jack Cross, Chairman/Mayoral Designee  
Jeffrey Burg, Citizen Member  
James Butera, Elected Member  
Jeffrey Walther, Elected Member

**ABSENT:** Velicia McMillan, Citizen Member/Merit Head

**STAFF:** Colleen Barraza  
Ken Nemec  
Chanda Washington

**OTHER:** Michael Anthony, Esq.  
Hanna Auckland, Esq.  
Police Officer James Powers  
Mrs. Julianne Powers

### **Call to order**

Chairman Cross called the meeting to order at 11:01 a.m. He stated that the first order of business was the acknowledgement of Board Member McMillan's excused absence.

### **Roll call**

A formal roll call confirmed the members present as stated above.

#### **1. Review and Approval of Meeting Minutes—February 15, 2011**

**BOARD MEMBER WALTHER MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE FEBRUARY 15, 2011 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER BUTERA SECONDED THE**

**MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.**

**2. Review and Approval of Meeting Minutes—February 17, 2011**

**BOARD MEMBER WALTHER MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE FEBRUARY 17, 2011 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.**

**3. Induction of New Scottsdale Police Officers into PSPRS**

Mr. Nemec reported that there were two new Scottsdale police officers to induct into the PSPRS without pre-existing conditions noted. He explained that the police officers were lateral hires in December 2010 who graduated from the academy on January 27, 2011.

**BOARD MEMBER BUTERA MOVED TO APPROVE THE INDUCTION OF NEW SCOTTSDALE POLICE OFFICERS ERIC DURKEE AND KRISTOPHER JOHNSON INTO THE PSPRS EACH WITH AN EFFECTIVE MEMBERSHIP DATE OF JANUARY 27, 2011 AND WITH NO PRE-EXISTING CONDITIONS NOTED FOR EITHER OFFICER, PER THE ATTACHED INDUCTEE LISTING. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.**

**4. Discussion and Vote on Request to Change the Effective Date of Police Sergeant James C. Taylor's DROP Application from January 31, 2011 to January 29, 2011**

Mr. Nemec explained that the DROP effective date of January 31, 2011 was a typographical error in the paperwork for Sergeant Taylor's DROP application, which was approved at the February 17, 2011 meeting. He stated that the correct DROP Application effective date is January 29, 2011.

**BOARD MEMBER WALTHER MOVED TO APPROVE THE REQUEST TO CHANGE THE EFFECTIVE DATE OF POLICE SERGEANT JAMES C. TAYLOR'S DROP APPLICATION FROM JANUARY 31, 2011 TO JANUARY 29, 2011, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.**

**5. Discussion and Vote on the DROP (Deferred Retirement Option Plan) Application of Police Sergeant Bryan Brown**

Ms. Washington reported that Police Sergeant Bryan Brown entered into the DROP on February 26, 2011 with 22.12 years of service, electing to complete the full five-year period. She stated that his paperwork is in order and the monthly pension

check associated with Police Sergeant Brown entering into the DROP was in the amount of \$4,994.24.

**BOARD MEMBER WALTHER MOVED TO ACCEPT THE DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION OF POLICE SERGEANT BRYAN BROWN EFFECTIVE FEBRUARY 26, 2011, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.**

**6. Discussion and Vote on the DROP (Deferred Retirement Option Plan) Termination and Normal Retirement Application of Police Sergeant James Barnett**

Ms. Washington reported that Police Sergeant James Barnett entered into the DROP with 23.213 years of service and plans to retire from the DROP effective March 12, 2011 with a total of 24 years of service. She stated that his paperwork is in order and he would be receiving a monthly retirement benefit in the amount of \$4,608.48.

Chairman Cross expressed the Board's appreciation of Police Sergeant Barnett's many years of excellent service to the citizens of Scottsdale. Board Member Walther recalled that Police Sergeant Barnett became a Phoenix police officer in November of 1969 and transferred to Scottsdale in 1970.

**BOARD MEMBER BURG MOVED TO ACCEPT THE DROP (DEFERRED RETIREMENT OPTION PLAN) TERMINATION REQUEST OF POLICE SERGEANT JAMES BARNETT AND TO APPROVE HIS NORMAL RETIREMENT APPLICATION, EFFECTIVE MARCH 12, 2011 SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. THE MONTHLY PENSION ASSOCIATED WITH THIS APPLICATION IS \$4,608.48 TO BEGIN ON OR ABOUT APRIL 30, 2011. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.**

**7. Discussion and Vote on the Accidental Retirement Application of Police Officer James Powers**

Ms. Washington reported that Police Officer James Powers has applied for an accidental disability retirement as a result of the stroke he suffered on March 8, 2010. The Applicant's doctor indicated that while participating in a 2003 training session which involved being shot by pepperballs, a shot to the Applicant's chest caused a growth to occur in his aortic valve, which later caused his stroke in 2010.

Ms. Washington announced that Police Officer Powers and his wife were attending today's meeting in case the Board had any questions during their discussion about whether to send him for an independent medical examination.

Discussion ensued regarding whether the Applicant's doctor confirmed that the causation occurred while on duty. Board Member Walther stated that page 16 of the January 6, 2011 medical records indicates that the only preceding risk factor for the

valve injury was blunt chest trauma the Applicant sustained during a police officer training practice.

Ms. Washington recalled that Police Officer Powers gave staff some medical images on disk that they plan to supply to the IME along with his medical records for review.

In response to Board Member Butera's inquiry regarding whether the disability date was March 8<sup>th</sup> instead of March 4<sup>th</sup>, Police Officer Powers responded that he had the stroke on March 8, 2010. Board Member Butera directed staff to correct the date to reflect the actual date of the stroke.

Chairman Cross invited the Applicant to present his case. Police Officer Powers was sworn in by Mr. Anthony.

#### **Police Officer Powers' Statement**

Police Officer Powers recalled that while participating in a 2003 police officer training practice he received two shots to the chest, one of which hit the area above his aortic valve and later caused a stroke. This was the only time he could recall ever being hit in the chest.

Mrs. Powers confirmed that her husband's doctor stated that the only things that would cause a growth in his aortic valve would be a serious illness or an injury to his chest, noting that he has not had any serious illness or other injuries.

Chairman Cross elaborated that the cardiologist felt that it was very unusual for someone Police Officer Powers' age to have this type of medical problem and could only relate the growth back to the training incident.

Board Member Walther's expressed his concerns that the 368 pages of medical records do not reflect that diagnosis in detail. He stated that the only mention was when the doctor stated that "the only preceding risk factor for the valve injury was blunt chest trauma he sustained as part of a training practice as a police officer."

Mrs. Powers reported that the doctor informed them of his willingness to testify on Police Officer Powers' behalf.

Chairman Cross suggested that staff request a summary letter from the doctor that explains the relationship between the Applicant's current injury and the 2003 training incident.

Board Member Walther summarized that a form from Dr. Goodell states:

"James Powers was reviewed in my office today, May 26, 2010. His diagnosis is brain infarction and brain hemorrhage. He underwent a surgical procedure recently to remove the growth from his aortic valve. This was an embolic source to the brain. I do not see a clear reason. The origin of his stroke was either ..."

Board Member Walther reported that he was the program manager for pepperball from 2001 to 2003 before it transitioned to Sergeant Bryan Brown. Some changes have been made to the pepperball round since 2006.

Chairman Cross reminded the Board that they need to take into consideration whether Police Officer Powers was able to function as a police officer. He suggested that the Board send the Applicant for an IME, directing staff to send the doctor both sets of questions for an accidental and ordinary disability.

Mr. Anthony explained that the Board must not advise the Applicant legally regarding which type of disability fits their current situation. He stated that from a practical and logistical standpoint Chairman Cross' suggestion makes sense, since the questions are very similar between the two types of disabilities, with the difference being causation and duty-related causation.

Mr. Anthony elaborated that Police Officer Powers must decide whether he wants to submit both types of applications simultaneously so the Board can send him for an IME with both sets of questions being submitted to the IME physician.

Chairman Cross confirmed that staff had only received an accidental disability retirement application to be consideration by the Board.

Mr. Anthony discussed the fact that the medical records lacked an explanation of causation which was whether something occurred while on duty that caused the applicant's disabling condition. The medical records only discuss possible causation of the stroke as being either a growth on the aortic valve, a genetic disorder, or the pepperball incident.

In response to Board Member Burg's inquiry regarding whether the Applicant's physician would respond quickly to staff's request for a statement letter, Police Officer Powers stated that he sends his doctor text messages and he responds quickly.

Board Member Walther summarized that the Scottsdale Police Department became involved in the pepperball technologies program in 2001 and this system based on the typical paintball gun was developed in order to fill the gap between Taser and lethal force. The pepperball guns fire a plastic ball filled with pepper powder and scored multiple times along its exterior surface so that it immediately breaks open upon contact so that the pepper powder gets into the mucous membranes of the eyes, nose, and mouth.

Board Member Walther explained that during practice training events they usually target the entire chest area and back avoiding the face and head. In 2003 the company's training regimen required that the students be exposed to at least two rounds from the delivery system of compressed air at approximately 250 feet per second so they could experience the kinetic impact in addition to the effects of the powder, since a small portion of the population is immune to the capsicum powder.

Board Member Walther said that in 2003 the kinetic impact of each pepperball round was 8 to 10 foot-pounds compared to the kinetic impact of a 12 gauge bean bag round, which was 90 to 120 foot-pounds. He elaborated that the 40 millimeter exact

impact round also used in a tactical environment is 115 foot-pounds and the standard punch from a standard adult male is 15-20 foot-pounds.

Board Member Walther recalled that they used a SA200 System which has since been upgraded to a more technologically advanced gun that uses a 3 gram ball that has a 10 to 12 foot-pound kinetic impact. He reported that PepperBall has guns delivered to 8,000 police agencies around the world and to date zero lawsuits or injuries have been reported.

In response to Mr. Anthony's inquiry regarding whether the pepperball causes bruising upon impact or burning from the capsicum powder, Board Member Walther explained that the kinetic impact causes bruising similar to a paintball and the powder does not burn the skin, but does affect the mucous membranes.

Chairman Cross invited the Board members to decide whether Police Officer Powers should be sent for an IME or whether they would like to direct staff to request additional information from the doctor.

Board Member Burg directed staff to request a detailed explanation of causation from the doctor regarding how the impact of the pepperball caused the growth on the Applicant's aortic valve. He suggested that staff send the doctor information on how the pepperball launching system works.

**BOARD MEMBER BURG MOVED TO TABLE AGENDA #7 UNTIL STAFF OBTAINS A DETAILED EXPLANATION OF CAUSATION FROM DR. GOODELL REGARDING POLICE SERGEANT BROWN'S INJURIES. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER MCMILLAN WAS ABSENT.**

#### **CLOSED PUBLIC HEARING**

#### **8. Motion to Recess into Executive Session for Discussion of the Accidental Disability Retirement Application of Police Officer James Powers**

Chairman Cross deemed it unnecessary to recess into Executive Session.

#### **RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION**

#### **9. Discuss Public Safety Personnel Retirement System 2011 Proposed Legislation**

Mr. Nemec presented copies of a four-page document regarding the Public Safety Personnel Retirement 2011 Proposed Legislation updated on March 7, 2011, explaining that it is an excellent tool when reviewing retirement cases and survivor benefits.

Board Member Burg said he could not imagine including an emergency provision in a PSPRS Bill. Board Member Walther explained that the City currently has 45 employees

who could retire immediately if certain portions of the proposed legislation related to the DROP were passed today.

In response to Board Member Burg's inquiry regarding the guaranteed interest rate for the DROP, Chairman Cross responded eight percent. He commented that it would be easier to change the interest rate or make it a floating rate.

Board Member Walther recalled that the State Board of Trustees recommended changing it to a market rate. Board Member Butera stated that most police officers would take a zero because it was a forced savings program for the five years prior to retiring.

Mr. Anthony explained that the constitutional protection stems from the fact that the pension system gives the police officers contract rights and the constitution provides that the legislature cannot retroactively amend or change those contract rights. He noted that the pension system could be changed prospectively if it was a benefit that the police officers were not yet eligible for.

Discussion ensued regarding the legislature changes impacting new hires rather than the current program participants. Ms. Auckland stated that they could increase the number of years of service that the new hires must complete in order to be eligible for the program.

Mr. Anthony said that the way the proposed legislature was worded, if a police officer does not apply in time to meet the required deadline then they could say the applicant was never eligible for the benefits and could therefore eliminate the DROP program availability.

Ms. Auckland recalled following up on the current legislation through emails with the Assistant Administrator, Tracy Peterson, who informed her that currently there are no emergency or effective dates in the legislation for the DROP provision, only increases to contribution rates that would go into effect on July 1, 2011.

She stated that the proposal to eliminate the DROP does not have an effective date and should the legislation pass as written it would go into effect 90 days after the legislature adjourns for the summer session. Ms. Auckland elaborated on some ramifications of this.

Discussion ensued regarding whether it was premature for staff to publish information on the proposed legislation in CityLine. Mr. Anthony stated that the lack of a specific closure date would only add to the confusion. Chairman Cross suggested directing all inquiries to the PSPRS website.

#### **10. Report to the Board on Recently Completed Transfers of Prior Service Credits**

Ms. Washington reported that Police Officer Sean Twitchell purchased .216 years of service from the Arizona State Retirement System in addition to rolling over funds from his 457 account to increase his total years of service to 24.579.

She explained that Police Sergeant Bryan Brown purchased two years of military service using his 457 account in order to increase his years of service to 22.074 prior to entering into the DROP.

Ms. Washington announced that Police Officer Carrie Candler purchased 5.795 years of Fayetteville police service using her 457 account in order to increase her years of service to 18.407.

**11. Board Suggestions for Upcoming Agenda Items.**

Mr. Nemec reported that Police Lieutenant Chrzanowski's case would be agendized for the April meeting. Ms. Washington stated that she has not yet confirmed an interview availability date for the doctor. The retirement cases of Police Officers Jeremiah and Powers will also be on the agenda.

**ADJOURNMENT:**

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 11:50 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec  
PSPRS Police Local Board Secretary

Jack Cross  
PSPRS Chairman/Mayoral Designee